

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Valor Telecommunications, LLC, Transferor, and Shareholders of Valor Communications Group, Inc., Transferees)	WC Docket No. 04-156
)	
Application for Transfer of Control of Domestic and International Authority Under Section 214 of the Communications Act, as Amended)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	

COMMENTS OF WESTERN WIRELESS CORPORATION

Western Wireless Corp. (“Western Wireless”) submits these comments in response to the Public Notice regarding the above-captioned application for Section 214 authority. [1](#)/

The Commission should not provide artificial regulatory incentives that promote transactions – like GTE/Verizon’s sale of exchanges in 2000 to the investors who created Valor – in which the lure of increased universal service funding is a major factor driving large incumbent local exchange carriers (“ILECs”) to sell exchanges to smaller entities. Accordingly, Western Wireless submits that the Commission should consider the Section 214 authorizations at issue here on a non-streamlined processing basis, and should grant them after resolving several pending proceedings clarifying Valor’s regulatory status and the amount of

[1](#)/ *Public Notice*, “Domestic Section 214 Application Filed for Transfer of Control of Valor Telecommunications LLC,” WC Docket No. 04-156, DA 04-1141 (released April 27, 2004).

universal service support funding to which the company is entitled. These proceedings will have a major impact on Valor's revenue streams, the valuation of the company, and the value of the shares to be sold to the public. Accordingly, the public interest requires the Commission to resolve these proceedings before authorizing the transaction to proceed, in order to avoid unjustly enriching Valor's current shareholders and to avoid giving prospective investors an exaggerated and misleading view of the value of the company. More fundamentally, by resolving these Valor-related proceedings in the manner advocated by Western Wireless, the Commission will avoid setting a precedent that would encourage similar universal service-driven exchange sale transactions in the future, and thereby prevent undue increases in the universal service funds that would burden consumers and harm competition.

Western Wireless emphasizes that it does not oppose Valor's plans to conduct an initial public offering ("IPO") and offer income deposit securities ("IDSs") to the public. Western Wireless also does not oppose the issuance of Section 214 authorization for the corporate reorganization that is a prerequisite for the IPO to proceed. However, prior to the IPO, the public interest requires that the Commission resolve the following pending proceedings regarding Valor's regulatory status and entitlement to universal service funding:

- (1) The Commission should grant Western Wireless' petition to reject Valor's self-certification of its Texas and New Mexico incumbent local exchange carrier ("ILEC") operations as qualifying for the Act's definition of a rural telephone company ("RTC"); [2/](#)
- (2) The Commission should grant Western Wireless' petition to reject Valor's self-certification of its Oklahoma ILEC operations as qualifying for the RTC definition; [3/](#) and
- (3) The Commission should reject Valor's petition for a waiver of Section 54.305 of the Commission's rules, the rule providing that entities like Valor that purchase ILEC exchanges receive no greater universal service funding for those exchanges than the selling ILEC would have received (subject to a narrow "safety valve" exception for which Valor does not qualify). [4/](#)

The transaction at issue here must be understood in the broader context. The FCC's rules regarding larger ILECs' universal service revenues (based in part on a formula derived from forward-looking cost models) and access charges (based on price caps) have been revised over time in a manner intended to facilitate local competition and to be more consistent with an increasingly competitive marketplace. By contrast, the FCC's rules regarding smaller, rural ILECs' universal service support and access charges, both based on rate-of-return ("ROR") regulation, are considerably more generous and more monopoly-friendly. [5/](#)

[2/](#) *Western Wireless Petition to Reject Rural Telephone Company Self-Certification*, CC Docket No. 96-45 (filed July 27, 2000); see *Public Notice*, 15 FCC Rcd 15123 (CCB 2000).

[3/](#) *Western Wireless Petition to Reject Valor's Self-Certification as a Rural Telephone Company in Oklahoma*, CC Docket No. 96-45 (filed Sept. 16, 2003); see *Public Notice*, 18 FCC Rcd 20266 (WCB 2003).

[4/](#) *Valor Telecommunications of Texas, L.P. Petition for Waiver of Section 54.305 of the Commission's Rules*, CC Docket No. 96-45 (filed April 11, 2003) ("*Valor Waiver Petition*"); see *Public Notice*, 18 FCC Rcd 9040 (WCB 2003). See also Valor ex parte, CC Docket No. 96-45 (filed Nov. 6, 2003) (offering an alternative waiver proposal).

[5/](#) See generally *Western Wireless Corp. Petition for Rulemaking to Eliminate Rate of Return Regulation of Incumbent Local Exchange Carriers*, RM-10822, CC Docket No. 96-45

Accordingly, the rules create a strong, artificial incentive for large ILECs to sell exchanges to smaller ILECs in order to take advantage of the more favorable regulatory environment.

To counteract these incentives and prevent excessive growth in universal service funding requirements and access charge rate levels, the FCC rules (as well as the statute itself) include a number of “firewalls” between the “rural” and “non-rural” categories that make it more difficult to move exchanges out of the large ILEC regulatory framework and into the “rural” ILEC framework. ^{6/} Notwithstanding these regulatory “firewalls” between the regulatory frameworks for large and small ILECs, the FCC regrettably has granted routine waivers of many of these rules. In part for this reason, numerous exchange sale transactions have occurred over the past few years. ^{7/} One of the largest of these transactions was GTE/Verizon’s enormous sale of exchanges to the investors who created Valor in 2000.

(filed Oct. 30, 2003) (demonstrating anti-competitive and inefficient nature of ROR regulatory system).

^{6/} See, e.g., 47 C.F.R. § 61.41(d) & (e) (subject to specified exceptions, price cap ILECs may not re-institute access charges based on ROR); 47 C.F.R. Part 36-Appendix (defining ILEC study areas so as to preclude manipulation of those boundaries to maximize high-cost support); 47 C.F.R. § 54.305 (ILEC exchanges remain subject to the “non-rural” universal service rules even if the exchanges are acquired by a “rural” ILEC); 47 U.S.C. § 153(37)(D) (ILECs may qualify as “rural” based on percentage of lines in non-metropolitan areas only if they did so “as of the date of enactment” of the Telecommunications Act of 1996).

^{7/} See Economics & Technology, Inc., “Lost in Translation: How Rate of Return Regulation Transformed the Universal Service Fund for Consumers into Corporate Welfare for the RLECs,” pp. 23-25 (“*Lost in Translation*”) (attached as Appendix A to Western Wireless Reply Comments, *Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, RM-10822 & CC Docket No. 96-45, filed Feb. 13, 2004).

Valor paid GTE a premium of \$2,000 per access line in excess of net book value for the Oklahoma exchanges, and a premium of \$1,600 per access line in excess of net book value for the Texas and Oklahoma exchanges. ^{8/} The only plausible explanation for paying these premiums is that Valor's initial investors expected to be able to substantially increase the company's revenues from universal service payments over those received by the seller. Although the FCC, in issuing the waivers necessary to allow the transaction to proceed, insisted that Valor would receive the same universal service support that GTE would have received, pursuant to Section 54.305, nonetheless Valor sought a waiver of that rule a few short years later. ^{9/} In addition, relying on strained legal interpretations and a questionable internal reorganization, Valor has managed to re-characterize itself as qualifying for "rural" ILEC status, which entitles the company to increased universal service support and other regulatory benefits. Western Wireless has challenged both Valor's waiver request and its self-certification as a rural ILEC. ^{10/}

The value of the Valor IPO will turn on investors' expectations regarding what Valor is worth as a company, which in turn depends in large part on

^{8/} *Lost in Translation* at 23-24 (data derived from GTE-Southwest, 2000 10K Report filed with the U.S. Securities and Exchange Commission (Mar. 30, 2000)).

^{9/} *Valor Telecommunications of Texas, LP and GTE Southwest Inc. Joint Petition for Waiver of the Definition of "Study Area,"* 15 FCC Rcd 15816, ¶ 9 & n.26 (CCB Accounting Policy Div., 2000) ("*Valor/GTE Study Area Waiver*").

^{10/} *See supra* notes 2 & 3; Western Wireless Comments in Opposition to Valor Petition for Waiver, CC Docket No. 96-45 (filed May 30, 2003).

its expected revenue streams. ^{11/} Federal universal service funds make up a significant – and potentially increasing – part of Valor’s revenue streams. ^{12/} Yet investors cannot even guess what the universal service revenue stream will be unless and until the Commission addresses Valor’s pending waiver petition. Moreover, investors cannot know whether Valor is entitled to the favorable regulatory status it currently enjoys as a “rural” ILEC – and whether Valor may be obligated to disgorge some of the universal service revenues it has received in the past – unless and until the Commission addresses Western Wireless’ pending challenges to Valor’s “rural” status. If the IPO were allowed to proceed prior to resolution of these issues, then the valuation of the transaction could well be skewed as a result of incorrect information about the amounts of revenues that the company is entitled to receive. Existing owners of the company could be unfairly enriched and prospective investors could pay excessive amounts for the IDS shares offered in the IPO.

^{11/} Valor plans to offer Income Deposit Securities (“IDSs”) to the public, a new form of investment vehicle, in which a purchaser owns a combination of common stock and an interest-bearing note. The value of IDS shares depends even more heavily on expected revenue streams than ordinary shares of common stock. See http://www.amex.com/?href=/equities/IDS_main.htm (American Stock Exchange frequently asked questions about IDSs); see also <http://www.sec.gov/rules/sro/nyse/34-49515.pdf> (Securities & Exchange Commission’s April 1, 2004 notice and request for comment on New York Stock Exchange rule change permitting listing of IDS shares).

^{12/} Valor’s S-1 filing with the Securities & Exchange Commission discloses that it currently receives 3.4% of its revenues from federal universal service support, 20.7% of its revenues from Texas state universal service support, and 26.6% of its revenues from interstate and intrastate access charges. It also discloses, as a risk factor, the fact that “there are many issues before the FCC that could affect the amount of federal USF that we collect. If the FCC resolves any of these issues in a way that reduces the amount of federal USF support that we collect, our revenue and profitability could be adversely impacted.” Valor Communications Group, Inc., Form S-1 Registration Statement Under the Securities Act of 1933 (April 7, 2004), at 30; see also *id.* at 44.

Finally, the significance of this matter goes far beyond Valor itself. Unless the Commission takes action to resolve the pending questions regarding Valor's universal service support, Valor's existing owners could well reap a substantial windfall from the IPO. This will send a clear message to other carriers around the country: it will be open season for large ILECs to sell exchanges to smaller entities. ^{13/} These transactions will occur not because smaller entities can operate those exchanges more efficiently, or for any other economic efficiency rationale, but due to regulatory arbitrage. The Commission will have sent the message that carriers can maximize their universal service and access revenues by exploiting the discrepancy between "non-rural" and "rural" support. The overall impact will be to undermine the Commission's objectives of controlling the growth of universal service funding, reducing intercarrier compensation rate levels, and most importantly, promoting competition.

For the foregoing reasons, Western Wireless respectfully submits that the application for Section 214 authority be removed from streamlined treatment. Western Wireless further submits that, prior to allowing the IPO to proceed, the Commission should deny Valor's pending petition for waiver of Section 54.305 and

^{13/} It has been widely reported that Verizon, SBC, and other large ILECs are actively preparing to sell large numbers of exchanges. The Commission recently adopted an order that, regrettably, makes it easier for small rate-of-return ILECs to increase the level of interstate access rates when they purchase exchanges from larger price cap ILECs. *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Red 4122 (2004).

should grant Western Wireless' pending challenges to Valor's self-categorization as a "rural" telephone company.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

By: _____

Gene A. DeJordy,
Vice President of Regulatory Affairs
WESTERN WIRELESS CORP.
3650 131st Ave., S.E., Ste. 400
Bellevue, WA 98006
(425) 586-8700

Michele C. Farquhar
David L. Sieradzki
HOGAN & HARTSON L.L.P.
555 – 13th St., N.W.
Washington, D.C. 20004
(202) 637-6462

Mark Rubin
Director of Federal Government Affairs
WESTERN WIRELESS CORP.
401 Ninth St., N.W., Ste. 550
Washington, D.C. 20004
(202) 654-5903

Its Counsel

May 11, 2004

Service List

Qualex, International
qualexint@aol.com

Tracey Wilson
Competitive Policy Division, Wireline Competition Bureau
tracey.wilson-parker@fcc.gov

Dennis Johnson
Competitive Policy Division, Wireline Competition Bureau
dennis.johnson@fcc.gov

Julie Veach
Competitive Policy Division, Wireline Competition Bureau
julie.veach@fcc.gov

Susan O'Connell
Policy Division, International Bureau
susan.oconnell@fcc.gov

Christopher Killion
Office of General Counsel
christopher.killion@fcc.gov

Eric Einhorn
Telecommunications Access Policy Division, Wireline Competition Bureau
eric.einhorn@fcc.gov

Gregory J. Vogt
Wiley Rein & Fielding, Counsel for Valor Communications Group, Inc.
gvogt@wrf.com